

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

AHMAD YAZDCHI, HABIBOLLA
YAZDCHI, ABBAS YAZDCHI, and
ALI YAZDCHI,
Plaintiffs,

v.

AUTO PLANET, *et al.*,
Defendants.

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CIVIL ACTION NO. H-04-1493

ORDER

On May 6, 2005, Plaintiffs filed a Notice of Appeal [Doc. # 59] from the Court's dismissal of this case for lack of subject matter jurisdiction. Attached to the Notice of Appeal is an "Affidavit of Habibolah Yazdchi for Waiving Filing Fees." Habibolah Yazdchi is one of the four plaintiffs in this case. In his affidavit he indicates that he and his son, Abbas Yazdchi, have two money market accounts at Bank of America, one with a balance of \$10,901.39 and one with a balance of \$11,818.58. Habibolah Yazdchi states that he has not received any money from these accounts since November 1999. No financial information for the other two plaintiffs is provided. Because the evidence indicates that Habibolah and Abbas Yazdchi have sufficient financial ability to pursue this appeal, and because there is insufficient financial information regarding the other two Plaintiffs, the Court denies the request for waiver of the filing fees on appeal.


Additionally, to the extent Plaintiffs are seeking to appeal in forma pauperis, the applicable standards are set forth in 28 U.S.C. § 1915(a). The district court may deny leave

to proceed in forma pauperis if an appeal is not taken in good faith. *Cay v. Estelle*, 789 F.2d 318, 326 (5th Cir. 1986). An appeal is taken in good faith if it presents an arguable issue on the merits and therefore is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). In this case, it is undisputed that complete diversity among the parties does not exist and that the Court therefore lacks subject matter jurisdiction. Consequently, Plaintiffs have failed to present a nonfrivolous issue on appeal.

Based on the foregoing, it is hereby

ORDERED that the Affidavit of Habibolah Yazdchi for Waiving Filing Fees, docketed as a Motion to waive filing fees [Doc. # 59] is **DENIED**.

SIGNED at Houston, Texas, this **18th** day of **May, 2005**.



Nancy F. Atlas
United States District Judge